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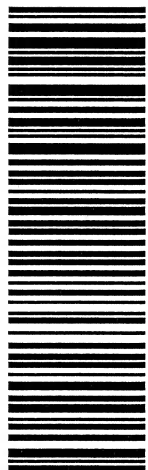
AUG 16 2019

CITY OF S. EUCLID
MAYOR'S OFFICE

Case# CV19919662

NAILAH K. BYRD
1200 Ontario
Cleveland, OH 44113

RETURN RECEIPT REQUESTED ELECTRONICALLY



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SOUTH EUCLID MAYOR GEORGINE WELO
SOUTH EUCLID MUNICIPAL COMPLEX
1349 SOUTH GREEN ROAD
SOUTH EUCLID OH 44121

SUMMONS IN A CIVIL ACTION COURT OF COMMON PLEAS, CUYAHOGA COUNTY JUSTICE CENTER
CLEVELAND, OHIO 44113

CASE NO.
CV19919662

D9 CM

SUMMONS NO.
39464219

Rule 4 (B) Ohio

Rules of Civil
Procedure

STATE OF OHIO, EX REL. JUDGE GAYLE
WILLIAMS, ET AL
VS
CITY OF SOUTH EUCLID, ET AL

PLAINTIFF

DEFENDANT

SUMMONS

SOUTH EUCLID MAYOR GEORGINE WELO
SOUTH EUCLID MUNICIPAL COMPLEX
1349 SOUTH GREEN ROAD
SOUTH EUCLID OH 44121

You have been named defendant in a sums
complaint (copy attached hereto) filed in Cuyahoga
County Court of Common Pleas, Cuyahoga County
Justice Center, Cleveland, Ohio 44113, by the
plaintiff named herein.

You are hereby summoned and required to
answer the complaint within 28 days after service
of this summons upon you, exclusive of the day of
service.

Said answer is required to be served on:



Plaintiff's Attorney

KIMBERLY VANOVER RILEY
600 VINE STREET

SUITE 2650
CINCINNATI, OH 45202-0000

Said answer is required to be served on Plaintiff's
Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court
within 3 days after service of said answer on
plaintiff's attorney.

If you fail to do so, judgment by default will be
rendered against you for the relief demanded in the
complaint.

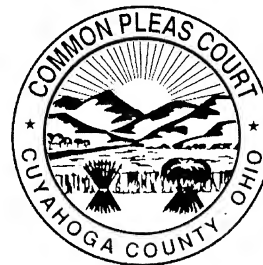
Case has been assigned to Judge:

MICHAEL J RUSSO
Do not contact judge. Judge's name is given for
attorney's reference only.

NAILAH K. BYRD
Clerk of the Court of Common Pleas

Jon Bullock

By _____
Deputy



DATE SENT
Aug 13, 2019

COMPLAINT FILED 08/12/2019



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AUG 16 2019

CITY OF S. EUCLID
MAYOR'S OFFICE

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AUG 16 2019
CITY OF S. EUCLID
MAYOR'S OFFICE



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed:
August 12, 2019 21:38

By: KIMBERLY VANOVER RILEY 0068187

Confirmation Nbr. 1787092

STATE OF OHIO, EX REL. JUDGE GAYLE WILLIAMS,
ET AL

CV 19 919662

vs.

CITY OF SOUTH EUCLID, ET AL

Judge: MICHAEL J. RUSSO

Pages Filed: 56

IN THE COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO

*THE STATE OF OHIO, ex rel. JUDGE
GAYLE WILLIAMS-BYERS, IN HER
OFFICIAL CAPACITY, AS
ADMINISTRATIVE AND PRESIDING
JUDGE OF THE SOUTH EUCLID
MUNICIPAL COURT*

1349 South Green Road
South Euclid, Ohio 44121,

Plaintiff/Relator

and

*THE STATE OF OHIO, ex rel. CLERK
CHARDALE SUMPTER, IN HER OFFICIAL
CAPACITY, AS CLERK OF THE SOUTH
EUCLID MUNICIPAL COURT*

1349 South Green Road
South Euclid, Ohio 44121,

Plaintiff

vs.

*THE CITY OF SOUTH EUCLID
South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121*

*SOUTH EUCLID COUNCIL MEMBER
DENNIS FIORELLI
South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121*

*SOUTH EUCLID COUNCIL MEMBER
JOSEPH FRANK
South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121*

*SOUTH EUCLID COUNCIL MEMBER
RUTH GRAY*

Judge _____

Case No. _____

COMPLAINT IN LAW

COMPLAINT IN EQUITY

**PETITION FOR A WRIT OF
MANDAMUS**

South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121

*SOUTH EUCLID COUNCIL MEMBER JANE
GOODMAN*

South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121

*SOUTH EUCLID COUNCIL MEMBER SARA
CONTINENZA*

South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121

*SOUTH EUCLID COUNCIL MEMBER
MARTIN GELFAND*

South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121

*SOUTH EUCLID COUNCIL MEMBER
JUSTIN TISDALE*

South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121,

Defendants/Respondents,

and

*SOUTH EUCLID MAYOR GEORGINE
WELO*

South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121

*SOUTH EUCLID FINANCE DIRECTOR
BRENDA WENDT*

South Euclid Municipal Complex
1349 South Green Road
South Euclid, OH 44121

Defendants

INTRODUCTION

1. Plaintiffs Judge Gayle Williams-Byers (“Judge”) and Clerk of Court Chardale Sumpter (“Clerk”), in their official capacities as the Administrative/Presiding Judge and Clerk of the South Euclid Municipal Court (“Court”), bring this action to redress multiple instances of financial misfeasance and operational interference that have adversely impacted the Court’s operations.

JURISDICTION AND VENUE

2. This case asserts claims to recover public funds pursuant to public employees’ and officials’ strict liability under R.C. 9.39 and common law—as well as the equitable powers of this Court to compel the return of funds held pursuant to a Constructive Trust or returnable due to the Unjust Enrichment of the City.

3. This Court has subject matter jurisdiction pursuant to R.C. 2305.01.

4. Venue is proper here because the claims asserted occurred in this County.

PARTIES

5. Judge Gayle Williams-Byers has served as the sole Administrative and Presiding Judge of the South Euclid Municipal Court since 2012. In that capacity, she has administrative oversight of the Municipal Court. She brings this action in her official capacity on the Court’s behalf.

6. The South Euclid Municipal Court has territorial jurisdiction over an area with a population of less than 100,000; therefore, pursuant to R.C. 1901.31(A)(2)(a), the Judge appoints the Clerk of the Municipal Court.

7. South Euclid Municipal Clerk Chardale Sumpter serves at the Judge's pleasure. The Clerk has statutory responsibility for the operation of the Clerk's Office pursuant to R.C. 1901.31, including the fiduciary responsibility to receive, collect, and issue receipts for all costs, fees, fines, bail, and other moneys payable to the Clerk's Office or to any officer of the Court. She likewise has responsibility to disburse to the proper persons or officers, and give receipts for, all costs, fees, fines, bail, and other moneys the Clerk collects. She also brings this action in her official capacity.

8. South Euclid Finance Director Brenda Wendt is the City's authorized fiscal officer pursuant to City of South Euclid Ord. 125.01, and the City treasurer pursuant to R.C. 733.44. As such, she has primary responsibility to oversee the City's receipt and disbursement of public funds under color of office. She has served in that capacity since April 2016. She is being sued in her official and individual capacity.

9. Pursuant to South Euclid Ord. 125.01 and R.C. 733.44 and 733.46, Finance Director Wendt serves the Mayor and City Council as its financial advisor. As such, she is obligated to maintain accurate financial records of all moneys received and expended by the City; she is the custodian of all public money of the City, obligated to keep and preserve money in the place authorized by law; and she is obligated to disburse those funds as required by law. She is appointed by and serves at the pleasure of the Mayor.

10. Mayor Georgine Welo has served as the City of South Euclid's Mayor since 2004. In that capacity, she is Ms. Wendt's appointing authority and supervisor, and she was the appointing authority and supervisor of Ms. Wendt's predecessors—former Finance Directors James Smith and Joseph Filippo. These Finance Directors were/are Ms. Welo's subordinates who serve(d) under color of her office. Mayor Welo is being sued in her official and individual capacity.

11. The duly elected members of City Council comprise the legislative branch of the City of South Euclid. They have the authority to appropriate money from the City's general fund pursuant to South Euclid Ord. 111.17 and R.C. 705.15. They are being sued in their official capacities.

**BACKGROUND INFORMATION—STATUTORY DISCRETIONARY
FUNDS OF THE COURT (“COURT DISCRETIONARY FUNDS”)**

12. On or about August 6, 1992, the General Assembly provided for the creation of Clerk of Court Computerization Funds (“Clerk Computerization Fund”) and Municipal Court Computerization Funds (“Court Computerization Fund”).

13. One or more of Judge Gayle Williams-Byers's predecessors—the late Judge Jerome Klein in 1992, Judge Edward Joseph from 1992-1993, or Judge Patricia Kleri after 1994—created a Clerk Computerization Fund pursuant to R.C. 1901.261 at some point between 1992 and 1997.

14. Judge Williams-Byers's predecessor, Judge Edward Joseph, created a Court Computerization Fund pursuant to R.C. 1901.261 in 1993.

15. Ohio R.C. 1901.26 was amended in 1996, to provide for the creation of Municipal Court Special Projects Funds.

16. Judge Kleri created one or more Special Projects Funds pursuant to R.C. 1901.26, beginning at some point between 1996 and 2000. During Judge Kleri's tenure she earmarked these monies by various names throughout their lifespan, including a generically captioned “Special Projects Fund,” and funds captioned by the particular purpose for which they were being reserved (*e.g.*, “Court Furnishings Fund”). However, all were Special Projects Funds under R.C. 1901.26.

17. Ohio R.C. 1901.26 and 1901.261 provide Municipal Courts with the option to establish three types of funds to enhance their efficient operations.

- A. The South Euclid Municipal Court has established and maintained at least three of these types of funds for decades—a Special Projects Fund pursuant to R.C. 1901.26(B); a Court Computerization Fund pursuant to R.C. 1901.261(A); and a Clerk of Court Computerization Fund pursuant to R.C. 1901.261(B) (“1901 Funds”).
- B. Money in the 1901 Funds comes exclusively from defendants who pay fees and court costs into the South Euclid Municipal Court.
- C. Each month, the Clerk of the Municipal Court submits a report to the City Finance Department that shows all costs, fines, and fees the Court has collected, including the amounts it has collected that are earmarked for the City’s deposit into the Court’s Discretionary Funds.
- D. The Court, through its Clerk, issues the City a disbursement each month that includes all receipts due to the City, including the costs, fines, and fees it has collected, and this includes the amounts that are earmarked for the Court’s Discretionary Funds.
- E. Each month, the Court transfers those monies to the city treasurer for its prospective use—the Finance Director in South Euclid. These statutes require the Finance Director to deposit the portions of the Court’s deposits that are attributable to its Discretionary Funds into fiduciary accounts that the Finance Director maintains and administers for the Court’s benefit pursuant to R.C. 1901.26(B)(1)(d) and 1901.261. The

Finance Director holds those transferred monies in trust for the Court's exclusive use, and subject to the Court's exclusive direction.

- F. The Finance Director assigns the following account numbers to each fund:
Court Computer Fund (City Account Number 917-7790-52756), Clerk of Court Computer Fund (City Account Number 917-7790-52757), and Special Projects Fund (City Account Number 917-7790-52758).
- G. Pursuant to these same statutes, the Finance Director may only disburse the monies in these accounts upon the Court's directive; s/he may only disburse the funds for the purposes articulated in the statute; and s/he may only disburse the funds in an amount that is less than or equal to the actual cost of the specified item/service/program.
- H. The Court does not need to obtain the Finance Director or City's consent to expend these funds; rather, the Court has exclusive discretion over the matters for which these funds may be expended, subject only to the restrictions of the statute.
- I. Discretionary Funds cannot be used to reimburse a funding authority for services they are obliged to provide the Court; they cannot be used "to replace moneys and services otherwise provided by statute for the operation of the court." Rather, these moneys are intended to provide "additional funds" to the court for "special projects." 1989 Ohio Op. AG No. 89-086. Therefore, Courts may not expend their Discretionary Funds to pay for services the City is already obligated to provide. 2001 Ohio Op. AG No. 6. Rather, these funds serve to *supplement* those provisions, but not to *replace* them. 2015 Ohio AG Op. 16, 17.

J. Most significantly: Whatever a Court fails to spend of its Discretionary Funds from year-to-year remains with the Court, available for its ongoing use. These funds are maintained across the years, and across administrations for the Court's benefit and for the Court's exclusive use.

18. Additionally, Ohio R.C. 4511.191(I)(1) requires the City of South Euclid, through its Finance Director, to establish and maintain an indigent drivers interlock and alcohol monitoring (IDIAM) fund.

A. Money in the IDIAM fund comes exclusively from the State of Ohio and from defendants who pay fines and fees into the South Euclid Municipal Court:

- i. Pursuant to R.C. 4511.191(F) and (F)(2)(h), 4511.19(G) and (G)(5)(e), and R.C. 4511.191(I)(1) and (I)(2), the State of Ohio Department of Public Safety collects funds that it appropriates to the City of South Euclid, which the City Finance Director must deposit into the IDIAM fund.
- ii. Pursuant to R.C. 4511.191(I)(2)(c), when a person charged in the South Euclid Municipal Court pays court fines or fees associated with a license suspension, a designated portion of that fine or fee is initially paid into the Court's accounts, which the Clerk then transfers to the City—where the Finance Director must deposit them into the “municipal [IDIAM] fund under the control of that court.”

B. Pursuant to R.C. 4511.191(F)(2)(h), money within the IDIAM fund “shall be used only to pay the cost of an immobilizing or disabling device,

including a certified ignition interlock device, or an alcohol monitoring device used by an offender . . . who is ordered to use the device by a . . . municipal court judge and who is determined by the . . . municipal court judge not to have the means to pay for the person's use of the device."

C. IDIAM funds are may only be spent (1) when ordered by the Municipal Court Judge, and (2) only for the purpose of paying for the costs of an indigent defendant's immobilizing device, disabling device, or alcohol monitoring device.

D. Whatever a Court fails to spend of its IDIAM funds from year-to-year remains with the Court, available for its ongoing use. These funds are maintained across the years, and across administrations for the Court's benefit and for the Court's exclusive use.

19. The Court has exclusive discretion regarding whether and when it wishes to spend monies in the Special Projects Fund, Court Computerization Fund, Clerk of Court Computerization Fund, or IDIAM Fund. (These funds will be collectively referred to throughout this Complaint as "Discretionary Funds" or "Court Discretionary Funds.")

20. However, the Court is not permitted to open or maintain its own bank accounts to hold or disburse its Discretionary Funds.

A. Instead, pursuant to R.C. 1901.26(B), 1901.261, 4511.191, the city treasurer—the Finance Director in South Euclid—is statutorily obligated to place the Court's Discretionary Funds into a fund s/he establishes and maintains, and where s/he holds those funds in trust for the Court.

- B. The Finance Director may only disburse the Court's Discretionary Funds following a proper disbursement authorization from the Court; only for the purposes permitted by each statutory fund; and only for the express amount authorized, but not for more than the cost of that expenditure. The Finance Director is likewise obligated to maintain the Court's unspent Discretionary Funds in trust, to ensure they remain available to the Court until the Court deems it appropriate to spend them.
- C. In this capacity, the Finance Director serves in a fiduciary capacity to the Court: She maintains the Court's Discretionary Funds in trust for the Court's exclusive use and benefit. She has a fiduciary obligation to ensure these funds are only disbursed as permitted by law and as authorized by the Court. Further, she has no autonomy or discretion to disburse those funds in the absence of the Court's authorization, and she is tasked with ensuring those funds remain available for the Court's use when it sees fit.

BACKGROUND INFORMATION—COURT BUDGETING PROCESS

23. For every budget year (which spans from January 1 – December 31), the Court submits a proposed budget to the City Finance Director, to be shared with City Council, in anticipation of City Council's budget hearings.
24. The Court's budgets all follow the same format: The proposed budget is broken into two primary sections that parallel the two ultimate categories of appropriations the City prepares in its annual budget resolution: The first figure is for the Court's "Personal Services," which later appear in the ultimate budget resolution as "Personal Services," and the second figure is for its "Materials/Supplies/Services, which later appear in the

ultimate budget resolution as "Other Charges." These two categories are added to comprise the total appropriation for that year.

25. In the Court's proposed budgets, it provides details about the following sub-categories within each of the two main categories:

A. Personal Services Budget – The Court's Wages, Health Insurance, and Fringe Benefits portion of the budget are combined to form a single "Personal Services Budget." This figure comprises the total amount to be paid from the City's general fund for three sub-categories: Wages, Health Insurance, and Fringe Benefits:

(1) Wages for Full- and Part-Time Employees: The Court identifies each full- and part-time employee, and their proposed wages. This section of the proposed budgets details the overall total cost of wages, but it also identifies the specific sources of payment for these funds:

- a. *City, County, and State Portion*: The wages of some Court officials and employees are shared by the City, County, and State. For those individuals, the Court provides a detailed breakdown in the proposed budget that shows the overall wage of each individual, as well as what portion of that figure is paid by the City, County, and State.
- b. *Longevity Pay*: The City provides longevity pay for some individuals, which the budgets specify under each relevant employee's pay.
- c. *Grant Funding*: In some years, the Court secures grant funding. This money may only be used to pay for items that the grant permits, which may or may not include the ability to apply some of those funds toward wages—it all depends upon the terms of the grant. When a grant allows money to be applied toward employees' wages, *and* when the Court has

elected to utilize the grant money in that manner, the Court will include a breakdown in the proposed budget that shows what portion of the overall wage is to be paid from the City's general fund, and what portion the Court has arranged or authorized to be paid from the grant.

- d. *Court Fund Contributions:* Finally, in some years, the Court has utilized money from its funds established pursuant to Ohio R.C. 1901.26(B) and 1901.261 to contribute to the wages of an employee. In those instances, the Court identifies the employees' overall wages for that year; what portions are to be paid from the City's general fund and any other sources; and what portions the Court has authorized to be paid from the its Special Projects Fund, Clerk of Court Computer Fund, and Court Computer Fund.
- e. *Total City Wages for All Court Employees:* At the end of the "Wages" section of the proposed budget, the Court provides a summary of the total amount of full- and part-time employee wages that are to be paid from the City's general fund. This figure combines the portion of wages due from the City general fund and Longevity Pay. It omits the portion of wages due from the County or State, amounts designated from Grant Funding (if any), and amounts from Court Fund Contributions (if any).

(2) Health Insurance "Break-Out" Per Employee: In the "Wages" portion of the proposed budget, the Court notes whether each employee utilizes single or family health insurance coverage. In a separate section of the budget, it lists each employee; their type of coverage; and the cost of that coverage to the City. Additionally, the Court's proposed budgets specify the following:

- a. *City, County, and State Portion:* The cost of Health Insurance for the Municipal Court Judge and the Municipal Clerk of Court are shared by the City and County pursuant to Ohio R.C. 1901.11(C), 1901.111, and 1901.312(C)(2)(a). Neither the Clerk nor the Judge have utilized the City's Health Insurance for several years now; however, when one or both of them did, the proposed budget always included a breakdown to show the overall cost of Healthcare Insurance, minus the County portion, and the amount that was ultimately the City's responsibility.
- b. *Opt Out* - The City of South Euclid offers individuals who are eligible to use the health insurance the alternative to receive a flat sum (that is less than the cost of the insurance to the City) if they opt out of that coverage; therefore, the budget notes which individuals are eligible for this payment instead of the higher expense of either form of coverage.
- c. *Court Fund Contributions:* In some years, the Court's proposed budget has required all Health Insurance costs to be paid from the City's general fund. In other years, the Court has authorized a portion of some employees' health insurance to be paid from the Court Computer Fund or the Special Projects Fund—and always in a specifically defined amount. In those instances, the Court has expressly provided the portion of the Health Insurance cost that was attributable to the City's general fund as well.
- d. *Total Health Insurance for All Court Employees:* At the end of the "Health Insurance 'Break Out' Per Employee" section of the proposed budget, the Court provides a summary of the total cost for Health Insurance to be paid from the City's general fund. This figure combines the

portion of Health Insurance expenses due from the City general fund and the Opt-Out. It omits the portion of Health Insurance due from the County (if any) and amounts from Court Fund Contributions (if any).

(3) Fringe Benefits: After the “Wages” and “Health Insurance” portions of the Court’s proposed budget, it lists the projected expenses associated with Medicare, PERS, Worker’s Compensation, Life Insurance, and Unemployment (“Fringe Benefits”).

- a. Unlike wage and healthcare costs—which the Court can predict with some degree of certainty before its proposed budget is due—there is always some degree of uncertainty about the amount of Fringe Benefit figures prior to the budget hearings because only the Finance Director can provide confirmation of these numbers.
- b. Therefore, the Court has routinely listed these amounts with a series of asterisks next to them, or some other indication that notes that the Finance Director needs to verify the actual amount prior to the budget being finalized. Typically, the Judge and/or Clerk have engaged in correspondence or communications with the Finance Director in advance of the budget hearing—or at the budget hearing—to verify the accuracy of those numbers.

(4) Total Personal Services Budget: At the end of the “Personal Services” section of the Court’s proposed budget, it provides a total of the Wages, Health Insurance, and Fringe Benefits sub-categories that create one final “Personal Services Budget” figure that is to be paid from the City’s general fund. This is

the total figure that the City is responsible to provide from the general fund for Wages, Health Insurance, and Fringe Benefits.

B. Material/Supply/Services: The Court's proposed budgets provide a separate, second series of sums for its "Material/Supply/Services Budget," which is comprised of the sum of smaller categories of line-items for Materials & Supplies, Contractual Services, and Other Charges.

21. These proposed budgets provide the Finance Director with explicit information regarding how much money the Court is authorizing to be disbursed toward a particular employee's wage or other category of expense in each new year, as well as the particular fund from which the Court has authorized those funds to be expended (e.g., Special Projects, Court Computer Fund, etc.).

22. Pursuant to R.C. 1901.26(B) and 1901.261, if the actual cost of providing an employee's wage or other category of disbursement is ultimately less than the amount the Court authorized in its proposed budget, the Finance Director is prohibited by statute from expending more than what is actually required; she is prohibited from disbursing those funds for any other purpose. The Finance Director is also prohibited from disbursing funds from a different discretionary fund than the one authorized by the Court.

A. For instance, if the Court authorized a portion of an employee's wages to be paid from the Special Projects Fund, but that employee separated from employment before year end, the Finance Director could not disburse the full amount the Court had authorized, nor could she expend those funds on the wages of another employee.

B. Similarly, if the Court authorized wages for an employee to be paid from the Special Projects Fund, the Finance Director could not pay that employee's wages from the Court Computer Fund.

FACTS

Discovery of City Misappropriation From Court Special Projects Fund, Clerk of Court Computer Fund, and Court Computer Fund

23. In February 2019, the Clerk and the Judge obtained information from the Finance Director about the combined total of the Court's three Discretionary Funds under Chapter 1901—the Special Projects Fund, Clerk of Court Computer Fund, and Court Computer Fund (“1901 Funds”).

24. Based on both the Court's past expenditures from its 1901 Funds, and the information contained in the Court's monthly reports provided by the Finance Director, the reported totals of these Discretionary Funds were much lower than either the Judge or Clerk expected or had understood was available.

25. The Clerk requested a detailed summary of the accounts' disbursements—“Audit Trails”—for 2018 to determine why the balances of these funds were so different than what she and the Judge had believed they should be. These were not reports the Court received from the Finance Director in the ordinary course of business—they were reports for which the Clerk had to make a special request.

26. During the Clerk's review of the 2018 Audit Trails, she discovered that the reports showed debit entries for codes or vendors not utilized by the Court and/or not appropriately connected to the given fund. For example, both the Court's Special Projects Fund and the Municipal Court Computer Fund showed entries for vendors including BUREA55, MEDIC55, PAYROL, MEDICARE and PERS. These were not codes

or vendors that the Clerk recognized as matching any approved allocation of funds from the Court's Discretionary Funds.

27. On February 14, 2019, the Clerk provided the Finance Director a summary of unauthorized expenses that appeared to have been improperly deducted in 2018 from the Court's Discretionary Funds. She asked that the Finance Director review and explain the deductions. These totaled \$64,200.16 (\$41,061.44 from the Special Projects Fund; \$5,967.65 from the Clerk of Court Computer Fund; and \$17,171.17 from the Municipal Court Computer Fund).

28. On February 15, 2019, instead of the Finance Director responding to the Clerk's email, Mayor Welo forwarded the inquiry to the Judge and she provided a response, indicating that all of the codes referenced in Clerk Sumpter's summary were associated with payment of Workers' Compensation, Medical Mutual (health insurance), Payroll, Medicare, and PERS for employees associated with the Court. Mayor Welo explained that the City deducted Court employees' Payroll from the Court's Discretionary Funds, as well as the proportionate amount of their Fringe Benefits. The Mayor further stated this had been the City's consistent practice since at least 2008. (A true and accurate copy of that email is attached as Exhibit A.)

29. The Court's 2018 budget had only authorized the Finance Director to disburse \$18,000 in wages (\$12,000 to Shallanna Agbomanyi and \$6,000 to Jennifer McCown) from the Court Computer Fund, and \$5,687 (\$3,025 to Gary Patrick and \$2,662 to Ray Adornetto) from its Special Projects Fund. It had not authorized any disbursements for Workers' Compensation, Medical Mutual, Medicare, or PERS, nor had it authorized disbursements for wages in excess of these amounts or for other employees.

30 Upon information and belief, based upon her own correspondence to the Court, Mayor Welo directed the Finance Director (and finance directors James Smith and Joseph Filippo before Ms. Wendt) to pay the City's obligatory expenses for Court employees' PERS contributions, Medicare, Worker's Compensation, Health Insurance, and/or other fringe benefit expenses—in whole or in part—from the Court's Discretionary Funds. This was done without the required order or consent of the Municipal Court Judge (Judge Gayle Williams Byers from 2012-present; and her predecessor, Judge Patricia Kleri, from 1994-2011). By Mayor Welo's own admission, this practice has occurred since at least 2008; however, the Court has no reason to believe the practice began in that year. Rather, this was only as far back as Mayor Welo indicated she had instructed the Finance Director to look in previous years' records to verify the City's practice. To date, the Court has located Discretionary Fund disbursements from the Court's 1901 Funds used to pay Medicare without any apparent authorization from the Court to do so.

30. Upon information and belief, the Court has not issued any order or proposed budget (from Judge Kleri, Judge Joseph, or Judge Klein) that authorized the City to pay employees' PERS, Medicare contributions, health insurance, dental insurance, life insurance, and disability (collectively "Fringe Benefits") from the Court's Discretionary Funds.

31. Both Judge Williams-Byers and her predecessor, Judge Kleri, authorized the City to utilize the Court's 1901 Funds to pay for portions of employee wages. However, only Judge Williams-Byers authorized the disbursement of 1901 Funds to pay for a portion of an employee's compensation beyond wages; and she only authorized this in very limited and narrow circumstances. Yet the Finance Director made extensive and regular

disbursements from these funds for a number of employees in 2019 and for at least the 12 year period prior.

32. Additionally, the Court has historically approved some disbursement of its Discretionary Funds to pay portions of one or more designated employees' wages; however, it has discovered instances where a far larger sum was improperly disbursed from its Discretionary Funds for this purpose.

33. Pursuant to R.C. 1901.26 and 1901.261, the Finance Director was only authorized to disburse these moneys in the instances where the Court expressly authorized the City to do so, and for the particular employee and in the particular amount the Court had explicitly authorized.

34. Absent an express authorization from the Court to disburse any of its 1901 Funds for these purposes in a particular year and in a particular amount, the City was always obligated to pay these funds from the general fund appropriations.

35. Notably, in every instance where the Finance Director improperly made unauthorized disbursements from the Court's Discretionary Funds to pay for employee fringe benefits without the Court's authorization, the City *actually appropriated* funds to pay for these expenses from the general fund.

36. The Mayor's explanation for the Finance Director's 2018 disbursements from the Court's Discretionary Funds in particular is inaccurate for a number of reasons, including, but not limited to, the following:

- A. The Court only authorized Special Projects disbursements in the 2018 budget for the payment of four employees' wages, totaling \$23,687—and it had not authorized any Health Insurance or other Fringe Benefit payments. In its proposed budget, the Court proposed the City pay for the remaining Personal Services budget (including all Health Insurance and other Fringe Benefits, and remaining Payroll), which the City approved and appropriated.

In 2018, the Court had specifically proposed a 2018 budget that authorized the partial payment of four employees' payroll from its collective Discretionary Funds: \$18,000 from its Court Computer Fund to pay portions of the overall wages of employees Agbomanyi (\$12,000) and McCown (\$6,000), and \$5,687 from its Special Projects Fund to pay portions of the overall wages of employees Patrick (\$3,025) and Adornetto (\$2,662).

However, all other payroll, and all other associated expenses in the Court's Personal Services budget (*i.e.*, health insurance, Medicare, PERS, Worker's Comp, Life Insurance, and Unemployment—collectively referenced throughout this Complaint as "Fringe Benefits") were identified in the proposed budget as to be paid entirely from the general fund. The Court did not direct that any Discretionary Funds be used for these purposes. Moreover, Council approved the Court's submitted budget, and it appropriated general fund dollars in the exact amount of the Court's "Personal Services Budget," which had designated all these funds to be paid by the City.

Moreover, the line-item appropriations for PERS (101-7750-52150), Medicare (101-7750-52153), and all other line-items in the Court's Personal Services Budget matched the precise amounts the Court had provided were to be paid by the City in its budget, and what was actually appropriated by the City from general fund dollars.

- B. The Finance Director disbursed or oversaw the disbursement of a far larger amount of Payroll from the Court's Discretionary Funds than the Court authorized in 2018.

The Court authorized the disbursement of \$18,000 from its Computer Fund (917-7790-52757) in 2018 for the payment of wages for employees Abomanyi (\$12,000) and McCown (\$6,000). 2018 Audit Trails demonstrate that the Finance Director or those subject to her control disbursed approximately \$15,193.99 from this fund, using the "Payroll" vendor code. While the Court has no ability to determine from the Audit Trails that these disbursements were actually applied to Ms. Agbomanyi and Ms. McCown, it believes these disbursements were likely proper. Ms. Agbomanyi resigned her employment before the end of 2018, resulting in less than the full \$12,000 the Court had approved toward her payroll being expended.

The Court authorized the disbursement of \$5,687 from its Special Projects Fund (917-7790-52758) in 2018 to pay for portions of the overall wages of employees Patrick (\$3,025) and Adornetto (\$2,662). Yet the 2018 Audit Trails show that the Finance Director or those subject to her control disbursed approximately \$29,497.09 from this fund, using the "Payroll" vendor code.

- C. The Court's 2018 Budget did not authorize any disbursements from its Clerk of Court Computer Fund.

The Court did not authorize the disbursement of any moneys whatsoever from its Clerk of Court Computer Fund (917-7790-52756) in the 2018 budget—not for wages or any other purpose. Yet the 2018 Audit Trails show that the Finance Director or those subject to her control disbursed Worker's Compensation and Medicare disbursements from this fund.

- D. The Court did not authorize any Fringe Benefit disbursements from any fund in 2018, but those disbursements were entirely disproportionate to the wage authorizations, in any event.

Finally, the Court did not authorize the disbursement of any money from its Discretionary Funds for Fringe Benefits in 2018. However, even taking the Mayor's inaccurate claim as true (that these Fringe Benefits were only charged from the Court's Discretionary Funds "in proportion" to the wages the Court had authorized from those funds—because this was supposedly how it had always been done), her explanation doesn't match the disbursements: The actual Special Projects disbursements showed figures that are well out of proportion to the limited wage figure the Court had authorized from its Special Project Funds—as well as the added wages the Court had arranged to be paid from an OHMAS grant (which would similarly have failed to provide any funds toward Fringe Benefits).

Reporting Misappropriations from 1901 Funds to City Council, the Mayor, and the Finance Director

37. On February 19, 2019, the Court met with Council President Fiorelli and Finance Chairman Frank to relay its discovery of these misappropriations.

38. To date, City Council has taken no action to return these misappropriated funds to the Court, nor is the Court aware of any effort by the City to assess the full extent of the City's improper expenditures from the Court's funds. To date, the City has not produced the documentation necessary to allow the Court to fully quantify these misappropriations.

39. On February 20, 2019, the Court took two additional measures to promptly address its discovery of the City's misappropriation of Court funds: It issued an extensive analysis of the Court's view of the misappropriations to the Finance Director,

seeking her response by February 22; it also issued an administrative order, precluding any further unauthorized disbursements from the Court's Discretionary Funds.

40. To date, the Court has not received further analysis or explanation from the Finance Director, Mayor, or City Council regarding the missing funds or the plan to return them to the Court's funds.

Discovery of City Misappropriation From IDIAM Fund

41. In addition to the discovery of misappropriated 1901 Funds, the Court has recently discovered the additional misappropriation from other sources of funding.

42. The Court has been the recipient of State grant funding from Ohio Mental Health and Addiction Services Specialized Dockets Support Program since December 2015. For each annual award, the Court was obligated to spend the funds according to the terms of the grant—principally as wage subsidies for Court staff who administer the court's mental health docket, and to defray costs associated with treatment services and recovery supports for participating defendants.

43. Further, the terms of the OHMAS Grant required the Court to expend or encumber the grant funds as follows:

A. In 2015, the Court was awarded a \$20,000 OHMAS grant, which it was required to spend or encumber by June 30, 2016. In its proposed budget for 2016, the Court directed the Finance Director to expend 100% of this grant money on the wages of Chief Deputy Clerk (which had to be spent or encumbered by June 30, 2016);

B. In October 2016, it received a \$21,208 OHMAS grant, which it was required to spend or encumber by June 30, 2017. In its proposed budget for 2017, the Court directed the Finance Director to expend 100% of this

grant money on the wages of Chief Deputy Clerk (Criminal)/Probation Officer Avery McCauley (which had to be spent or encumbered by June 30, 2017);

C. In October 2017, the Court was awarded a \$40,000 OHMAS grant, which it was required to spend or encumber by June 30, 2018. In its proposed budget for 2018, the Court directed the Finance Director to expend \$10,000 on the wages of Network Administrator/Deputy Clerk Shallanna Agbomanyi and \$25,000 on the wages of Chief Probation Officer Cheryl Martin; it endeavored to spend the remaining \$5,000 on other elements of the program by June 30, 2018; and

D. In October 2018, the Court was awarded a \$40,000 OHMAS grant, which it was required to spend or encumber by June 30, 2019. In its proposed budget for 2019, the Court directed the Finance Director to expend \$17,500 on the wages of Chief Probation Officer Cheryl Martin, and \$10,500 on the wages of Probation Officer Samuel Platt, and \$5,000 on the wages of a still-to-be-hired Deputy Clerk/PIO (who was later hired—Akrum Jamal); it endeavored to spend the remaining \$8,000 on other elements of the program by June 30, 2019.

44. When the Court received this grant funding, the Finance Director did not create a new account or account number for those funds; instead, she placed it in the same account number as the Court's IDIAM Fund, 917-7790-52759.

45. The Clerk addressed this issue with the Finance Director, indicating she believed the OHMAS grant funds should be assigned their own unique account number so that

the grant money would not be commingled with or confused for the IDIAM monies, and that no misuse or mishandling of either type of fund would occur.

46. In April 2018, the Finance Director's monthly report to the Court showed that the Court's IDIAM Fund dropped to a negative balance (-\$977.50). At or near this time, the Court stopped authorizing any purchases from the IDIAM Fund so it could replenish the balance to a positive number.

47. Further, at or near this same time, the Clerk advised the Finance Director that the account should not be used for any purchase requisitions until it had a positive balance; instead, the Court would purchase any indigent defendant's immobilizing device, disabling device, or alcohol monitoring device from its Indigent Driver Alcohol Treatment (IDAT) fund, or otherwise provide for this expense from another funding source until that account had been replenished.

48. A little more than one year later—in July 2019, the Clerk discovered what appeared to be an inaccurate balance and other information meriting correction on the Finance Director's monthly report:

A. First, the report appeared to show that the Court's OHMAS Grant funds were still being commingled with and managed from within the Court's IDIAM Fund.

B. Second, it was showing a \$40,000 balance from the Court's OHMAS Grant funds when all of it should have been expended by June 30, 2019—the grant deadline for those funds to be spent or encumbered.

49. Additionally, upon inspecting the Finance Director's Audit Trails, the Clerk discovered disbursements from the Court's IDIAM Fund (which still contained both IDIAM and OHMAS Grant monies) for Medicare, PERS, and payroll expenses that

were neither authorized nor permissible IDIAM expenses, and that the Court had not authorized to be expended from the OHMAS grant at all, and/or they exceeded the amount of the Court's authorization, and/or they were expended after the termination date of the grant.

50. On August 17, 2018, the Finance Director disbursed \$32,307.32 from the IDIAM Fund for payroll; \$138.16 for Medicare, and \$4,523.01 for PERS. On January 18, 2019, she disbursed \$2,961.27 for payroll and \$41.71 for Medicare; on February 1, 2019, she disbursed \$1,842.77 for payroll and \$26.72 for Medicare; on February 15, 2019, she disbursed \$2,030.44 for payroll and \$28.16 for Medicare; and on February 28, 2019, she disbursed \$672.55 for PERS. This resulted in a complete disbursement from the Court's IDIAM fund from July 1, 2018 – June 30, 2019 of \$44,572.11

51. Further, some of the disbursements from the IDIAM Fund were used to pay for expenditures of the Court that City Council had approved to be paid from the general fund (e.g., Medicare and PERS), and the City had in fact appropriated money to be paid from the general fund. But, instead, the Finance Director disbursed payment for these expenses from the Court's IDIAM Fund.

52. Because these disbursements not only exceeded the total the Court had earmarked to be paid from the OHMAS grant funding for wages—but it also exceeded the total amount of the OHMAS grant funding, the Finance Director's disbursements that were paid in excess of the OHMAS grant funding were paid from the Court's IDIAM funds that were commingled in the same account—until and beyond the point the account had a negative balance.

53. Further, those disbursements have continued and the negative balance of the IDIAM Fund has continued until it has reached a substantial deficit, notwithstanding

the fact that the Court has not expended any money from this Fund since approximately April/May 2018.

54. In June 2019, the IDIAM Fund balance was approximately -\$17,000; in July 2019, the Court received a monthly report from the Finance Director showing an IDIAM Fund balance of -\$28,050.51—notwithstanding the fact the Court has not authorized any disbursements from this Fund since approximately April/May 2018, and the OHMAS grant period ended June 30, 2019.

55. In July 2019, the Clerk asked the Finance Director for information about these figures, and the Finance Director indicated she had continued to pay expenses from this account, notwithstanding its negative balance and notwithstanding the Clerk's prior indication that the fund should not be used while it had a negative balance. Further, the Finance Director issued these disbursements from the IDIAM Fund in the absence of any authorization from the Court.

56. In the same pattern of the City's improper expenditure of the Court's 1901 Funds to pay City obligations, it has expended the Court's IDIAM Funds to pay City obligations.

57. As of July 2019, the Finance Director has still not created a separate account for the Court's OHMAS Grant money, although the Finance Director has pledged to correct this in the July 2019 Audit Trail.

DEFENDANTS' CONDUCT PRECLUDED THE COURT'S DISCOVERY OF ITS MISAPPROPRIATIONS

58. The Court was entitled to place reasonable reliance on the competence and good faith of those who assumed a legal and fiduciary obligation to guard its funds.

59. Defendants never provided contemporaneous correspondence or documentation to the Court to demonstrate that the City was engaging in these improper expenditures from the Discretionary Funds. To the contrary, these expenses had been expressly included in the Court's regular budget for *each* of these years where authorized and appropriate. That is, these expenses had been actually approved by the City in the Court's regular budget; and they had been actually appropriated by the City as part of the Court's regular appropriations in each of these years. This created a misleading system whereby the Court would have no notice of or reason to discover this wrongful taking from its Discretionary Funds.

60. Neither the Finance Director (nor her predecessors) nor any other Defendant provided the Court with regular copies of the bank statements from the accounts where the City maintained the Court's Discretionary Funds. Neither the Finance Director (nor her predecessors) nor any other Defendant provided the Court with regular copies of the Audit Trail reports that showed individual withdrawals from the Discretionary Funds. Either of these documents could have informed the Court that its Discretionary Funds were being disbursed in excess of the Court's authorization.

61. Instead, the only relevant documents the Finance Director provided the Court on a regular basis were the monthly Expense Reports. In a series of instances where the Finance Director disbursed the Court's Discretionary Funds to pay for items that the City had already appropriated general fund dollars to provide, the monthly Expense Reports inaccurately showed that the expenses were being properly paid from its general fund appropriations.

62. Further, the Expense Report shows balance information for the Court's Discretionary Funds that bears no relationship to the actual balance of those three

Funds. The total expenditures from the Audit Trails, and the resulting balances of the three 1901 Funds were markedly different than the totals that had appeared in the Court's monthly reports from the Finance Director.

- A. For instance, on May 31, 2019, the Court's Agency Fund Analysis report showed the Court's Municipal Court Computer Fund had a balance of \$321.66; however, the Court's monthly Expense Account Reports it received from the Finance Director on that same date showed the unexpended balance for that same fund as \$35,863.50.
- B. When the Clerk inquired of the Finance Director why the monthly report would show the \$35,863.50 figure if that didn't exist in the account, Ms. Wendt provided, "The \$35,863.50 has been set aside so that you would have funds available to spend if you have that net balance after receipts and expenditures are considered. But the amount that you actually have available to spend is the difference between the funds actually received and the funds spent or \$321.66." (A true and accurate copy of that correspondence is attached as Exhibit B.)
- C. The Finance Director's explanation amounts to an admission that the figures in the Court's monthly reports show illusory balances for its Discretionary Funds that bear no relationship to reality.

63. As the result of the Court's reliance on the inaccurate information in the Expense Reports, it was actively misled into believing its expenses were being paid from its general fund-provided budget instead of being improperly taken from the Court's Discretionary Funds accounts.

64. Further, the City's budget approval and appropriations created the misimpression that the City was financing these expenses from the general fund each year, as City Council had appropriated; however, due to the improper withdrawal of these funds from the Discretionary Funds, the Court returned every dollar of these appropriations to the City's general fund at the close of each budget year. That is, they paid for this improper expense twice—they didn't get the benefit of the appropriated money from the general fund before returning it to the City at year end, *and* they were deprived of that money from their Discretionary Funds. (This is because, each year, the Court is obligated to return all budgeted appropriations it does not expend throughout the year to the City treasury.)

65. The practical effect of these unauthorized Discretionary Fund deductions accompanying the City's appropriations for the same amounts was that, unbeknownst to the Court and without its authorization, the City was improperly paying the Court's budgeted expenses from its Discretionary Funds instead of from its regular budget, as legally approved and authorized by South Euclid City Council.

66. For over a decade, the Finance Director and her predecessors—under the Mayor's supervision (and, upon information and belief, with her knowledge and/or direction) improperly disbursed or oversaw the improper third-party disbursement of Court Discretionary Funds to **pay City obligations** without the Court's knowledge or consent, and contrary to law.

67. Thousands of dollars were improperly stripped from the Court's Discretionary Funds, notwithstanding the fact is money was statutorily protected from the City's reach or control. These funds are supposed to accumulate and carry over from year-to-year for the Court to use at its discretion to enhance its efficient operations. Therefore unspent

funds from the accounts would still be accessible to the Court for its use today, had they not been misappropriated.

68. These improper disbursements created a windfall for the City. Each year, the City appropriated general fund dollars to the Court to pay for its reasonable and necessary operating expenses; however, the Finance Director improperly disbursed or oversaw the improper disbursement of Court Discretionary Funds to pay these expenses instead. This caused the Court to experience an apparent surplus in its annual appropriations from the City at year-end, which it was obligated to return to the City general fund. This created a dynamic whereby the City made annual, illusory appropriations to the Court for its lawful obligations, but those funds were never expended—they were always returned to the general fund because the Court's Discretionary Funds were improperly and unlawfully disbursed to pay these expenses instead.

69. The Court placed the Mayor, the Finance Director, City Council President Fiorelli, and City Council Finance Committee Chair Frank on notice of this discovery in February 2019. The remaining defendants were therefore constructively noticed shortly thereafter. However, to date, Defendants have declined to return—or even to calculate—the funds that the Finance Director has improperly disbursed or delegated to third-parties to disburse from the Court's Discretionary Funds, and it has voiced no plan to expend City funds to remedy these improper expenditures.

70. The Court is substantially impaired by its lack of access to its Discretionary Funds: It cannot supplement its appropriations to enhance its efficient operation, nor can it spend its Discretionary Funds for projects which the City refuses to fund via the budget.

71. The Court is in the active throes of a budget dispute with the City, rendering its loss of these misappropriations all the more dire because its Discretionary Funds—which would have otherwise provided the Court with some ability to temporarily supplement its employees' wages and operating incidentals during the pendency of that ongoing litigation—have all been gutted. While the Court faces a \$283,251 budget deficit, the Court should have reserves into the hundreds of thousands; however, it instead has only a fraction of this amount remaining.

72. The law's remedy for misappropriated public funds, regardless of whether they are unaccounted for due to an intentional act or a mistake, is to permit an action to recover that money from the public employees/officials who had responsibility for the funds, as well as their supervisors—and to hold them personally, strictly, jointly, and severally liable for the losses. Plaintiffs seek the recovery of those funds on the Court's behalf.

73. To the extent the official capacity Defendants are unable to satisfy the outstanding obligations to the Court, Plaintiffs likewise seek the return of these funds from the City, through its City Council, as the legislative authority with appropriations authority—which has incurred an equitable obligation to return the funds due to the City's unjust enrichment and receipt of this money in constructive trust.

74. Alternatively, in the absence of any remedies in law or equity being available to correct this harm, Plaintiffs seek the return of these funds via an order in *mandamus*.

75. The Court's ability to expeditiously recover these funds is critical to its efficient operation. To that end, the Court is entitled to all its legal expenses associated with this dispute (including, but not limited to, attorney's fees, costs, and expenses), which it has

both ordered City Council to pay in an Administrative Order, and which it additionally seeks ordered in this matter.

**OTHER INTERFERENCE WITH COURT ACCOUNTS AND COURT-
CONTROLLED FUNDS**

76. This is not the first instance where one or more Defendants have improperly interfered with Court accounts or funds:

- A. The Clerk of Court maintains a series of bank accounts whereby she must deposit all income that is properly deposited to, collected by, or held by the Court for reasons required by law (*e.g.*, rent deposits, garnishments, fines, bonds, etc).¹ Then, the Court—through the Clerk—has a similar fiduciary obligation to hold these moneys in trust. Finally, the Court—through the Clerk—has an obligation to make monthly disbursements from these accounts, remitting money due to the State, County, City, and other proper owners of the funds, as defined by law.

¹ These accounts in the Court's name—which hold money that belongs to the State, County, City, and others—are distinguishable from the accounts maintained in the City's name that hold money belonging to the Court.

The Court's Discretionary Funds are the exclusive property of the Court, but the accounts where this money is maintained are held and controlled by the City. The Court has exclusive discretion regarding when and in what amount the Finance Director must disburse those funds, pursuant to R.C. 1901.26 and 1901.261. However, the accounts are held in trust by the Finance Director, and all disbursements must occur through the City Finance Director after a proper authorization to disburse from the Court.

By contrast, the accounts noted in this paragraph are in the Court's name, but they are holding the money in trust for the proper owner of those funds.

- B. Pursuant to R.C. 1901.31(G), the Clerk of Court selects the bank at which to maintain an account to collect, hold, and disburse these funds on behalf of the Court.
- C. Key Bank Tampering - The Clerk of Court maintained these accounts at Key Bank until 2018: In 2018, the Court learned that an unidentified representative of the City had surreptitiously removed the Clerk of Court and all other Court signers from their own accounts. Further, this representative had added Mayor Welo and Finance Director Wendt as the only two individuals with recorded signatures on the account, or who could issue checks on the account.
- D. This unauthorized maneuver caused a significant portion of work at the Court to come to a virtual standstill, leaving the Court incapable of fulfilling its fiduciary and mandatory obligations—including issuing bond refunds, processing felony bindover money, making garnishment payments, or writing checks to issue obligatory disbursements.
- E. The Court undertook the curative effort to restore the Clerk and Clerk's Office signatures to the account—reinstating their ability to issue checks on the account—and then the Clerk moved these accounts to PNC Bank to prevent further unauthorized tampering by City officials.
- F. PNC Bank Tampering - Thereafter, later in 2018, an unidentified representative of the City engaged in yet-another kind of improper interference with the Court's accounts: He or she improperly authorized the sporadic transfer of funds that had been deposited directly into the

Court's PNC account (from Court users who had issued credit card payments to the Court) directly into a City bank account.

- G. This transfer was improper, and it was effected without authorization by or notice to the Clerk. This transfer was performed by someone within City administration, as no one at the Court or Clerk's office has access to the individual bank account numbers of the City's account that were necessary to accomplish the transfer.
- H. This act involved the tampering with funds the Clerk held as a fiduciary, in trust for the City—but it also tampered with funds that had other rightful owners. That is, the act of transferring these funds from the Court's accounts into the City's accounts was not a “no harm, no foul” proposition, even though the Clerk would later disburse a significant portion of those same funds to the City via a check.
- I. The problems with this conduct were several-fold: First, in the sporadic instances where credit card payments deposited with the Court were transferred into the City's accounts, the entirety of those payments were moved to the City's accounts (*i.e.*, not just the City's proper share of those payments). Second, the Clerk is obligated to make these disbursements and record them accordingly—she is supposed to issue the disbursements; they are not supposed to be involuntarily taken from the account. By the City representative's act of “helping himself (or herself)” to these funds without authorization, the Clerk had the great potential to unwittingly disburse these funds to the City twice—once when the Clerk was issuing them, but once previously when someone had surreptitiously *taken* them.

- J. This interference was again contrary to law, and without authorization. This improper conduct required another significant investment of time and attention from the Clerk of Court and other Court staff: PNC Bank had to correct the account balances and return the wrongfully transferred moneys back to the Court's account (where, in many instances, a significant portion of that money—but not all—was properly disbursed right back to the City).
- K. Third Bank - Thereafter, the Court moved its accounts to its third bank in 2018, all to avoid further improper interference with its accounts by South Euclid City officials.
- L. The Court was unaware throughout 2018 that, in addition to both of these improper manipulations of its accounts, that one or more representatives of the City had engaged in an ongoing practice of permitting, facilitating, or ordering the misappropriation of Court Special Project Funds as well.
- M. Plaintiffs seek an injunction to restrict Defendants from engaging in any further interference with Court bank accounts and funds the Clerk holds in trust.

77. This interference caused significant operational disruption, and it resulted in the Court moving its accounts two different times last year to avoid further tampering with its accounts—and to ensure its ability to honor its fiduciary obligations to the owners of the funds within those accounts.

78. Since the Court first raised the issue of misappropriation of its Discretionary Funds in February 2019, the City, City Council, Mayor Welo, and Finance Director Wendt have been represented throughout by the City Law Department. These

Defendants' representation by the Law Department has created a conflict of interest precluding the Law Department's representation of the Court.

79. The Court requires counsel to pursue this matter on its behalf.

80. The Court issued an order to City Council to appropriate funds to pay the Court's legal expenses associated with this dispute, which Courts have inherent authority to order to accomplish the funding necessary for the efficient administration of the court. *State ex rel Wilke v. Hamilton County Board of Commissioners*, 90 Ohio St.3d 55, 65, 2000-Ohio-13.

81. Plaintiffs also seek the payment of their attorney's fees, costs, and other expenses associated with obtaining this relief.

COUNT I – BREACH OF FIDUCIARY DUTY (ALL DEFENDANTS)

82. Plaintiffs incorporate by reference all previous paragraphs as if fully restated herein.

83. By law, the City, through its Finance Director, maintains the Court's Discretionary Funds in accounts that are under its exclusive control, but subject to disbursement at the Court's exclusive discretion. The City, through its Finance Director, has an ongoing fiduciary obligation to maintain these funds in a responsible, capable, and competent manner.

84. Since February 2019, the members of City Council, Mayor Welo, and Finance Director Wendt have been on actual and/or constructive knowledge of the City's improper disbursements of Court Discretionary Funds, in an amount to be determined.

85. All Defendants have had an obligation to require the prompt assessment, calculation, and return of Court funds over which the City had fiduciary control.

86. To date, Defendants have not calculated to total of its misappropriations, nor have they taken any effort to return those funds, free and clear of prohibited conditions.

87. This constitutes a breach of Defendants' fiduciary duty, causing harm to Plaintiffs—namely the inability to utilize these funds to further the efficient operation of the Court.

88. As the result of this harm, Plaintiffs are entitled to the immediate calculation of Defendants' misappropriations, and the return of these funds as a matter of law. They seek injunctive and declaratory relief, and Plaintiffs also seek the payment of their attorney's fees, costs, and other expenses associated with obtaining this relief, pursuant to both the Judge's ability to order that recovery, and to this Court's ability to do so.

**COUNT II - PUBLIC OFFICIAL/EMPLOYEE STRICT LIABILITY PURSUANT
TO R.C. 9.39 AND OHIO COMMON LAW (MAYOR WELO, FINANCE
DIRECTOR WENDT)**

89. Plaintiffs incorporate by reference all previous paragraphs as if fully restated herein.

90. The Court experienced an extensive history of misappropriations from its Discretionary Funds for a series of years—at least since 2007, and potentially as early as the origins of these funds.

91. The amount of these misappropriations varied from year-to-year; they were often small in the earlier years, yet they fluctuated from year-to-year.

92. While the Court or Clerk could theoretically request them, the Finance Director did not regularly share bank statements or Audit Trails with the Court or Clerk to provide detailed information about the disbursements from the Discretionary Funds.

93. The Court and Clerk had no reason to request the bank statements or Audit Trails from the Finance Department because they were provided with monthly Expense

Reports / Agency Reports that purported to show appropriations provided to the Court, and expenditures from the Court's Discretionary Funds.

94. However, the Court has only learned this year that the numbers reflected in those reports were significantly inaccurate: They showed expenditures from categories of appropriations to pay Fringe Benefits that were actually paid from the Court's Discretionary Funds.

95. Further, those reports showed inflated balances within the Court's Discretionary Funds that the Finance Director knew to be inaccurate, but which the Court and Clerk were never advised were inaccurate.

96. The reports the Finance Director and her predecessors provided the Court failed to apprise the Court of these misappropriations or that they could not rely on the figures represented in their reports.

97. The Finance Director had ultimate fiduciary and statutory responsibility to ensure the Court's Discretionary Funds were only disbursed as permitted by R.C. 1901.26, 1901.261, 4511.191, and other applicable law—when ordered by the Court, and in no more than the amount authorized by the Court.

98. The Finance Director had ultimate fiduciary and statutory responsibility to ensure that any third-party vendors sub-contracted by the City to make disbursements from City bank accounts (who remained subject to the Finance Directors' supervision) did so as permitted by R.C. 1901.26, 1901.261, 4511.191, and other applicable law.

99. Instead, the Finance Director engaged in or oversaw a pattern of unauthorized and improper disbursements from the Court's Discretionary Funds without the Court's knowledge or authorization—and in express violation of R.C. 1901.26, 1901.261, 4511.191, and other applicable law.

100. If each of the unauthorized Discretionary Funds expenditures had never been made, those funds would have remained in the Court's Discretionary Funds accounts, where they would be available for the Court's benefit—as they carry over from year-to-year without returning to the City general fund.

101. Mayor Welo is the appointing authority and supervisor of Ms. Wendt and she was the appointing authority and supervisor of Ms. Wendt's predecessors throughout her tenure. Mayor Welo had supervisory oversight over each Finance Director's conduct and the performance of their duties throughout her tenure.

102. R.C. 9.39 and Ohio common law make a public official strictly and personally liable for all unauthorized disbursements of a public office's public money if the official is directly involved in the receipt or collection of the office's public money or if s/he has supervisory authority over those involved in those activities.

103. Employees, officers, and duly authorized agents of the City are public officials who are strictly liable for the loss of public funds under R.C. 9.39 and Ohio common law.

104. All the money involved in the improper disbursement of Court Discretionary Funds were funds the Court received pursuant to R.C. 1901.26, 1901.261, 4511.191, and other applicable law; those funds were remitted to the City for the Finance Director to oversee and disburse according to law.

105. Finance Director Wendt and her predecessor Finance Directors were involved in the receipt, collection, and oversight of the Court's Discretionary Funds, and they each had the responsibility in the course and scope of their duties to disburse those funds according to law. Mayor Welo had supervisory oversight of these functions from the beginning of her tenure to present day.

106. Consequently, Finance Director Wendt and Mayor Welo are therefore strictly and personally liable, on a joint and several basis, for all disbursements from Court Discretionary Funds that occurred under their tenure that were not authorized by the Court pursuant to R.C. 1901.26, 1901.261, 4511.191, and other applicable law.

107. These Defendants are obligated to make these payments to the City Finance Director, in an amount to be established following the City's production of records, to be held in trust on the Court's behalf—to then only be prospectively disbursed in a manner permitted by R.C. 1901.26, 1901.261, 4511.191, and other applicable law.

108. The Court is entitled to the payment of all its attorney's fees, costs, and expenses incurred in obtaining this relief, pursuant to both the Judge's ability to order that recovery, and to this Court's ability to do so.

**COUNT III – ALTERNATIVELY SEEKING RELIEF IN EQUITY FROM THE
CITY AND CITY COUNCIL TO RETURN ALL UNAUTHORIZED
DISCRETIONARY FUND DEDUCTIONS**

109. Plaintiffs incorporate by reference all previous paragraphs as if fully restated herein.

110. To the extent the recovery of the Court's funds are unavailable from the Defendants in Counts I and II, principles of equity compel the return of these funds from the City and the Members of City Council.

111. The practical effect of the years of unauthorized Discretionary Fund Disbursements was that the City experienced a windfall each year through the significant apparent budget surpluses the Court returned to the general fund each year—which only existed because a series of City obligations that it had even appropriated money to pay each year had been improperly paid for from Court Discretionary Funds. This created a dynamic whereby the Court returned a large portion of its appropriations

each year that it would have otherwise expended on those obligations—to the detriment of the Court’s Discretionary Funds and to the benefit of the City’s general fund.

112. This practice has amounted to years of unjust enrichment to the City and years of financial detriment of the Court.

113. In each year the Court had an apparent “surplus” from its budget appropriations, and it returned those funds to the City general fund, the City received an unfair windfall that served to unjustly enrich its accounts. This amounted to receipt of property via a Constructive Trust—by obtaining the return of its appropriated general funds—through mistake, breach of fiduciary duty, or otherwise. As a matter of equity, it has no entitlement to those funds.

114. Unjust enrichment will result if the City does not appropriate the improperly disbursed Discretionary Funds to be designated to the Court’s Discretionary Funds, for its prospective benefit: In each instance where Discretionary Funds were improperly disbursed in the place of appropriated general fund dollars, they were expended on the City’s obligations to provide for Court wages or Fringe Benefits that it had authorized in its budget. In each instance of improper disbursement, the City enjoyed the return of those unspent general fund dollars when those funds would otherwise have been expended (and the Court’s Discretionary Funds would have been preserved).

115. Defendants City and Council have the ability and obligation to return the Court’s misappropriated funds.

116. The Court is entitled to recover the complete sum of all improperly expended Discretionary Funds (including, but not limited to, its Special Project Fund under R.C. 1901.26, its Clerk of Court Computer Fund under R.C. 1901.261, its Municipal Court

Computer Fund under R.C. 1901.261, and its IDIAM Fund under 4511.191), in an amount to be established following the City's production of records in discovery.

117. Judge Williams-Byers, on behalf of the Court, is entitled to the payment of all the Court's attorney's fees, costs, and expenses incurred in obtaining this relief, pursuant to both the Judge's ability to order that recovery, and to this Court's ability to do so.

**COUNT IV – ALTERNATIVELY SEEKING RELIEF IN MANDAMUS FROM
THE CITY AND CITY COUNCIL TO RETURN ALL UNAUTHORIZED
DISCRETIONARY FUND DISBURSEMENTS**

118. Plaintiffs incorporate by reference all previous paragraphs as if fully restated herein.

119. To the extent the recovery of the Court's funds are unavailable from the Defendants in Counts I and II as a matter of law, or from the Defendants in Count III arising from principles of equity, the Court is entitled to an order in *mandamus* to compel the return of its funds from the City and the Members of City Council.

120. If the Court has no claim or adequate remedy in the ordinary course of law, it continues to have a clear legal right to the relief sought herein, and the City has a clear legal duty to return the Court's funds that its agents wrongfully disbursed—this is especially the case when those funds were expended to create a direct financial benefit to the City.

121. The factual statements contained in this petition are verified by Plaintiff/Relator, Judge Gayle Williams-Byers, and supported by her Affidavit, attached to this Complaint.

122. Judge Williams-Byers, on behalf of the Court, is entitled to the payment of all the Court's attorney's fees, costs, and expenses incurred in obtaining this relief, pursuant to both the Judge's ability to order that recovery, and to this Court's ability to do so.

COUNT V - SEEKING INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS:

**REFRAIN FROM ANY FURTHER IMPROPER, UNLAWFUL, OR
UNAUTHORIZED INTERFERENCE, TAMPERING, OR
MISAPPROPRIATION OF COURT FUNDS, WITH COURT ACCOUNTS, PLUS
ALL ATTORNEY'S FEES, COSTS, AND EXPENSES INCURRED IN THIS
DISPUTE**

123. Plaintiffs incorporate by reference all previous paragraphs as if fully restated herein.

124. Defendant Finance Director (and/or her predecessors and designees) made disbursements of Court Discretionary Funds that violated the Finance Director's fiduciary and statutory responsibility to disburse Court Discretionary Funds, only as permitted in R.C. 1901.26, 1901.261, 4511.191, and other applicable law.

125. Defendant Mayor—the Finance Director's appointing authority—condoned, authorized, and/or instructed Defendant Finance Director and her predecessors/designees to engage in these improper disbursements.

126. Upon information and belief, one or more Defendants authorized third-party vendors to make disbursements from City bank accounts, which included the ability to make disbursements from the Court's Discretionary Funds without ensuring adequate supervision of those disbursements, resulting in further misappropriations from those funds.

127. Additionally, one or more Defendants have improperly and unlawfully tampered with Court bank accounts that are managed by the Clerk of Court pursuant to R.C. 1901.31(G), to substitute the Mayor and Finance Director for the Clerk and Court signatories.

128. Further, one or more Defendants have improperly and unlawfully arranged for the transfer of payments that had been deposited into Court bank accounts to be

transferred into City bank accounts without authorization or notice to the Clerk of Court, who is responsible to manage and make those disbursements pursuant to R.C. 1901.31.

129. The fair administration of justice compels injunctive relief to prospectively halt the effects of Defendants' pattern of misfeasance, inadequate oversight of designees, and inadequate adherence to boundaries inherent in the separate branches of government.

130. The efficient operation of the Court requires Judge Williams-Byers' ability to rely on the stability and accessibility of Court Discretionary Funds the City holds on the Court's behalf.

131. To ensure the fair administration of justice and the ability to comply with their statutory duties, the Court and Clerk require unfettered and uninterrupted ability to access the bank accounts over which the Court has fiduciary obligations, as well as the funds it holds in trust for others within those accounts. They must have the ability to maintain these accounts and maintain these funds without improper and unauthorized interference, disbursements, changes, or transfers by City officials or employees.

132. Judge Williams-Byers, on behalf of the Court, is entitled to Injunctive Relief, compelling Defendants to prospectively abstain from (1) improperly disbursing funds from the Court's Special Projects Fund under R.C. 1901.26, its Clerk of Court Computer Fund under R.C. 1901.261, its Court Computer Fund under R.C. 1901.261, its IDIAM Fund under R.C. 4511.191, without a proper directive from the Court; (2) delegating the disbursement of moneys from these funds by third-party vendors without taking adequate steps to ensure these funds are not improperly misappropriated; and (3) commingling and otherwise negligently mismanaging the administration of Court Discretionary Funds in a manner that they are not properly accounted for.

133. The Judge and Clerk, on behalf of the Court, are entitled to Injunctive Relief, compelling Defendants to prospectively abstain from (1) tampering or interfering with the bank accounts that the Court and Clerk maintain pursuant to R.C. 1901.31, and for which they have statutory and fiduciary responsibilities; and (2) accessing, transferring, or otherwise interfering with the funds the Court and Clerk hold in trust within bank accounts they maintain pursuant to R.C. 1901.31.

134. Finally, the Judge and Clerk, on behalf of the Court, are entitled to the payment of all the Court's attorney's fees, costs, and expenses incurred in obtaining this relief, pursuant to both the Judge's ability to order that recovery, and to this Court's ability to do so.

WHEREFORE, Judge Williams-Byers, on behalf of the Court, prays for the following:

A. First:

- a. A finding in declaratory relief that Defendants violated their fiduciary duty in failing to calculate and return the misappropriated funds of the Court, and an order in injunctive relief that they promptly remedy this error;
- b. A judgment in strict liability against the Finance Director and Mayor, who made, oversaw, or supervised the improper disbursements of Court Discretionary Funds—personally, in strict liability, and jointly/severally— for the complete amount of misappropriated Court Discretionary Funds occurring under their tenure, in an amount to be determined but exceeding \$25,000;
- ii. Alternatively, in the absence of complete relief from Defendant Finance Director and Mayor, a finding in equity that the City and Council are obligated

to return all funds improperly disbursed from the Court's Discretionary Funds, held in Constructive Trust by virtue of the Court's return of unexpended appropriations each year—in an amount to be determined but exceeding \$25,000;

- iii. Alternatively, in the absence of complete relief in its prayers in law or equity, an order in *mandamus* to compel the City and Council to appropriate the funding needed to make the Court's Discretionary Funds accounts whole, prior to the unauthorized disbursements of their funds—in an amount to be determined but exceeding \$25,000.

B. Second, an order issuing injunctive relief against Finance Director Wendt, Mayor Welo, and Members of City Council in their official capacities as follows:

- i. Directing the Finance Director and her successors to prospectively abstain from improperly disbursing money from the Court's Special Projects Fund under R.C. 1901.26, its Clerk of Court Computer Fund under R.C. 1901.261, its Court Computer Fund under R.C. 1901.261, and its IDIAM Fund under R.C. 4511.191, without an order from the Court, or in an amount that exceeds the actual cost of providing the authorized service or program;
- ii. Directing the Mayor and her successors to prospectively abstain from instructing the Finance Director to improperly disburse money from the Court's Special Projects Fund under R.C. 1901.26, its Clerk of Court Computer Fund under R.C. 1901.261, its Court Computer Fund under R.C. 1901.261, and its IDIAM Fund under R.C. 4511.191, without an order from the Court, or in an amount that exceeds the actual cost of providing the authorized service or program, and/or for a purpose that is not authorized by law;

- iii. Directing all these Defendants to prospectively abstain from delegating the disbursement of moneys from the Court's Discretionary Funds without an order from the Court, or in an amount that exceeds the actual cost of providing the authorized service or program;
 - iv. Directing Defendants to prospectively abstain from tampering or interfering with the bank accounts that the Court and Clerk maintain pursuant to R.C. 1901.31, and for which it has statutory and fiduciary responsibilities, and to follow responsible accounting procedures, such as avoiding the commingling of two different sources of Discretionary Funds to prevent the unlawful expenditure of one category to provide for the other; and
 - v. Directing Defendants to prospectively abstain from accessing, transferring, or otherwise interfering with the funds the Court and Clerk hold in trust within bank accounts they maintain pursuant to R.C. 1901.31.
- C. The Judge and Clerk, on behalf of the Court and Clerk's Office, additionally pray for an award of the Court's legal expenses incurred in addressing all of these disputes, including, but not limited to, their attorney's fees, costs, and expenses.
- D. Finally, the Judge and Clerk further pray for all other and further relief to which the Court may be entitled.

Respectfully submitted,
MONTGOMERY JONSON LLP

/s/Kimberly Vanover Riley
KIMBERLY V. RILEY (0068187)
14701 Detroit Ave., Ste. 555
Cleveland, Ohio 44107
Tel: (216) 221-4722
Fax: (513) 768-9205
kriley@mojolaw.com

GEORGE D. JONSON (0027124)
600 Vine Street, Suite 2650
Cincinnati, Ohio 44145
Tel: (513) 241-4722
Fax: (513) 768-9220
gjonson@mojolaw.com

Notice to the Clerk

Please make certified mail service upon all defendants.

Respectfully submitted,
MONTGOMERY JONSON LLP

/s/Kimberly Vanover Riley

Exhibit A

From: Judge [mailto:judgegwb@secourt.org]

Sent: Tuesday, February 19, 2019 11:38 AM

To: 'Georgine Welo'; 'dennisfiorelli@gmail.com'; 'director Michael Lograsso'; 'Brenda Wendt'

Cc: 'csumpter@secourt.org'

Subject: RE: 2018 SEMC Expense Audit Trail Report, Special Projects, Clerk of Court Computer Fund & Municipal Court Computer Fund

Mayor Welo,

Clerk of Courts Chardale Sumpter and I had a very fruitful meeting this morning with Council President Fiorelli and Finance Chairman Frank. I believe more depth would have been added to our discussion had Director Wendt appeared and participated. You may recall, Director Wendt initially indicated her unavailability at 8am. However, I was informed by Clerk Sumpter that she indeed was present in the building at 8am.

Notwithstanding your reply below, there is broad agreement that the matters at issue here are important and need swift resolution.

To that end, will you please take a look at your schedule and suggest times and dates, preferably this week for us to discuss this matter in person. Not only will this be helpful for the court, but it will also assist council in understanding some necessary issues that were raised during our morning discussion.

Thank you,
Judge Byers

From: Georgine Welo [mailto:gwelo@seucld.com]

Sent: Friday, February 15, 2019 5:33 PM

To: 'Judge'; dennisflorelli@gmail.com; director Michael Lograsso; 'Brenda Wendt'

Subject: RE: 2018 SEMC Expense Audit Trail Report, Special Projects, Clerk of Court Computer Fund & Municipal Court Computer Fund

Dear Judge Byers,

Please note the accounts below:

BUREASS	Bureau of Workers' Compensation
MEDICSS	Medical Mutual of Ohio
PAYROL	Payroll Gross Vendor
MEDICARE	Medicare
PERS	Public Employee Retirement System

All of the above are representative of accounts associated with payment of payroll for employees associated with the Court.

All payroll associated payments associated with the Court are charge in proportion to where the employee's time worked is charged. Fringe benefits (PERS, Medicare, etc..) are allocated in the same manner as salaries and wages. Health insurance, dental insurance, life & disability and other fringe benefits are also allocated in the same manner as salaries and wages.

This is not a new accounting practice but rather it is a consistent practice. To verify that the Accounting Practice was not new and or changed in anyway, I had Finance Director Wendt research it back to 2008. In closing, these are not unfamiliar codes and or vendors but accounts that have been consistent on your South Euclid Municipal Audit Report since your administration took office in 2012. I am glad I could help. Sincerely,
Georgine Welo, Mayor

----- Forwarded message -----

From: Chardale P. Sumpter <csumpter@secourt.org>

Date: Thu, Feb 14, 2019 at 3:47 PM

Subject: 2018 SEMC Expense Audit Trail Report, Special Projects, Clerk of Court Computer Fund & Municipal Court Computer Fund

To: <bwendt@seucld.com>

Cc: Judge <judgegw@secourt.org>

Good Afternoon Finance Director Brenda Wendt,

Judge Gayle Williams-Byers spoke with you this morning regarding the above mentioned report and asked that I perform a cursory review to determine if all of the expenses listed were indeed expense authorized by the Court.

Upon my review I noticed there were several debited entries with codes that are unfamiliar to the Court or codes that customarily used by the Court. The Judge stated she would provide you with a list questions so this matter may be resolved in a timely manner for the scheduled for Tuesday, February 19, 2019 at 8:00 AM.

I am asking you to review the following Audit Trail Reports that were provided to Court from the Finance Department:

Special Projects Audit Trail Report – Account # 917.7790.52758, all five pages of the report. These pages reflect debit entries with such codes or vendors as BUREA60 MEDIC55, PAYROL, MEDICARE and PERS. These are not codes or vendors that the Court uses when submitting an invoice for payment. I have estimated these unfamiliar codes or vendors total to \$41,061.44 of expenses that the Court does not recognize.

Clerk of Court Computer Fund Audit Trail Report – Account # 917.7790.52756, both pages of the report. These are not codes or vendors that the Court use when submitting an invoice for payment. I have estimated these unfamiliar codes or vendors total to \$5,967.65 of expenses that the Court does not recognize.

Municipal Court Computer Fund Audit Trail Report – Account # 917.7790.52757 all four pages of the report. These pages reflect debit entries with such codes or vendors as BUREA60 MEDIC55, PAYROL, MEDICARE and PERS. These are not codes or vendors that the Court uses when submitting an invoice for payment. I have estimated these unfamiliar codes or vendors total to \$17,171.17 of expenses that the Court does not recognize.

The Judge's 2018 SEMC Budget submitted to Council for approval certainly does indicate some monies were to be used from the Special Projects Fund and the Computer Fund for the following SEMC Staff, Ray Adometto and Gary Patrick both received a portion of their wages from the Special Project fund totaling \$5,687.00 and Shallanna Agbomanyi and Jennifer McCown received a portion of their 2018 wages from the Computer Fund totaling \$18,000.00. The budget does not indicate nor direct any other monies to be debited from these funds.

Brenda, the Judge is trusting you are able to expound on the unfamiliar codes or vendors found in the Court's review of the Audit Trail Reports for 2018 reports and looks forward to the scheduled meeting. Please feel free to contact me at ext. 230 if you should have any questions or concerns regarding this important matter.

Chardale P. Sumpter

Clerk of Court

Please be advised my new email address is csumpter@secourt.org.

Phone number 216.381.2880 ext. 230

Exhibit B

From: Brenda Wendt <bwendt@seuclid.com>
Sent: Thursday, June 13, 2019 3:39 PM
To: csumpter@secourt.org
Cc: Judge; Kimberly V. Riley; R. Todd Hunt; Georgine Welter; Michael Lograsso
Subject: Re: Court's Expense Audit Trail Report

Good Afternoon -

The \$35,863.50 has been set aside so that you would have funds available to spend if you have that net balance after receipts and expenditures are considered.

But the amount that you actually have available to spend is the difference between the funds actually received and the funds spent or \$321.66.

Brenda D. Wendt
Finance Director
City of South Euclid
1349 South Green Rd.
South Euclid, Ohio 44121

Phone (216) 381-0400
Fax (216) 291-4959

bwendt@seuclid.com

On Thu, Jun 13, 2019 at 2:49 PM Chardale P. Sumpter <csumpter@secourt.org> wrote:

Good Afternoon Director Brenda Wendt,

You advise me this afternoon you sent the Judge a copy of the Court's Expense Audit Trail Report for periods beginning January 1, 2019 thru May 31, 2019 or later per her public request. I am requesting you to forward these reports to me as well and at your earliest convenience.

The Judge is also requesting that \$8000.00 from account 101.7750.52404 (Postage) and \$2000.00 from account 101.7750.52718 (Indigent Legal Expense) be transferred to account 101.7750.52101 (Wages-Full Time) immediately. This will increase the fulltime wage line by \$10,000.00. The Judge is very much aware of the impact these deductions will have on the Postage and the Indigent Legal Expense Funds.

Earlier today I asked Debarah Gray for the Court's Expense Audit Trail Report from January 1, 2019 thru May 31, 2019 or later. Debarah emailed me an "Agency Fund Analysis" report and I did notice there is a considerable difference in this reports fund balances as of May 31, 2019 compared to the "Court's Expense Account Current Year Only". Please help me to understand why the two reports have different fund balances as of May 31, 2019. The Agency Fund Analysis reports the "Muni Court Computer Fund" has a balance as of May 31, 2019 of ~~\$321.66~~ and the Court's Expense Account Current Year Only' fund unexpended balance for the same account is \$35,863.50. This is tremendous difference.

Brenda, I thank you and appreciate any assistance you are able to offer as well explain to me.

Chardale P. Sumpter

Clerk of Court

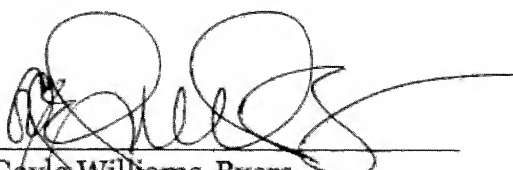
Please be advised my new email address is csumpster@secourt.org.

Phone number 216.381.2880 ext. 230

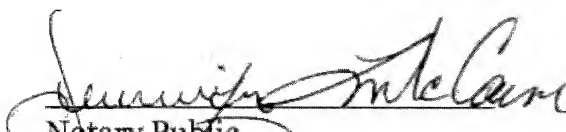
Fax Number 216.381.1195

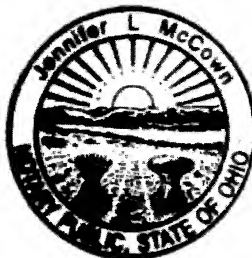
VERIFICATION

I, Gayle Williams-Byers, having been duly sworn, state and depose, based upon my own personal knowledge as Judge of the South Euclid Municipal Court, that all of the facts set forth within the foregoing Petition for a Writ of *Mandamus* are true and correct to the best of my personal knowledge. I affirm that I am competent to testify upon all matters stated herein upon my personal knowledge.


Gayle Williams-Byers

The following was sworn to and subscribed to me by Gayle Williams-Byers on this 2nd day of Aug, 2019.


Notary Public



Jennifer L. McCown

**NOTARY PUBLIC
STATE OF OHIO**

**My Commission Expires
March 25, 2020**

THE STATE OF OHIO, ex rel. JUDGE
GAYLE WILLIAMS-BYERS, IN HER
OFFICIAL CAPACITY, AS
ADMINISTRATIVE AND PRESIDING
JUDGE OF THE SOUTH EUCLID
MUNICIPAL COURT, et al.

Case No. _____

THE CITY OF SOUTH EUCLID, et al.

COUNTY OF CUYAHOGA)
)
STATE OF OHIO)

1. I am submitting this affidavit, based on personal knowledge. I am competent to testify to all matters stated in this affidavit.

2. I am the sole Judge of the South Euclid Municipal Court ("Court") and have held that position since 2012.

3. As the Court's Judge, I am familiar with the Court's administrative and funding practices.

All of the facts set forth within the foregoing Petition for a Writ of *Mandamus* are true and correct to the best of my personal knowledge.

GAYLE WILLIAMS-BYERS

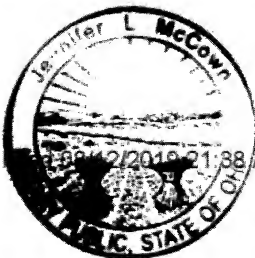
Sworn to before me and subscribed in my presence this 20 day of May, 2019.

NOTARY PUBLIC

Jennifer L. McCann

NOTARY PUBLIC
STATE OF OHIO

CV 19 919662 / Confirmation Nbr. 1787092 / CLJSZ
My Commission Expires
March 25, 2020



Electronically